

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:14-CR-00017-RJC-DCK

USA

v.

KEVIN SMITH (6)

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ORDER

THIS MATTER is before the Court upon a request by the defendant pro se to take judicial notice of facts which would render his sentence invalid, pursuant to Federal Rule of Evidence 201(b)(2). (Doc. No. 1129).

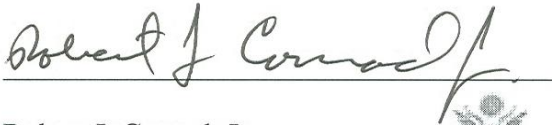
The defendant complains that the Court violated his right to due process and his rights under the Fifth and Sixth Amendments in applying the Armed Career Criminal sentencing enhancement. (*Id.* at 1). However, “it is well established that defendants convicted in federal court are obliged to seek habeas relief from their convictions and sentences through [28 U.S.C.] § 2255. *Rice v. Rivera*, 617 F.3d 802, 807 (4th Cir. 2010).

Here, the defendant previously filed a motion under § 2255, (Doc. No. 1047), which was denied, (Doc. No. 1103: Order). His appeal of that decision was dismissed by the Fourth Circuit. (Doc. No. 1108: Opinion). He has not shown that he has been granted permission by that court to file a second or successive § 2255 motion. Therefore, the Court is without jurisdiction to consider the instant request. *See United States v. Williams*, 621 F. App’x 212 (4th Cir. 2015) (district court

lacked jurisdiction to consider motion that was in substance a successive § 2255 motion).

IT IS, THEREFORE, ORDERED that the defendant's request for judicial notice, (Doc. No. 1129), is **DISMISSED**.

Signed: April 18, 2022

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

